

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

SHAWN HEARD,

Petitioner

v.

C-1-01-556

DEBORAH TIMMERMAN-COOPER,

Respondent

ORDER

This matter was referred pursuant to 28 U.S.C. § 636 to the United States Magistrate Judge for consideration and report on the Petition for Writ of Habeas Corpus filed by the petitioner pursuant to 28 U.S.C. § 2254. The matter is before the Court upon the Report and Recommendation of the Magistrate Judge (doc. no. 10) recommending that the Petition for Writ of Habeas Corpus be dismissed to which neither party has objected.

Upon a *de novo* review of the record, the Court finds that the Magistrate Judge has accurately set forth the applicable law and has properly applied it to the particular facts of this case. Accordingly, in the absence of any objection by petitioner, this Court accepts the Report as uncontroverted.

Accordingly, the Court accepts the factual findings and legal reasoning of the Magistrate Judge and hereby **ADOPTS AND INCORPORATES BY REFERENCE** into this Order by reference his Report and Recommendation dated October 31, 2003. The Petition for Writ of Habeas Corpus is, therefore, **DISMISSED WITH PREJUDICE** on the ground that it is barred from review under the one-year statute of limitations set forth in 28 U.S.C. § 2244(d).

Pursuant to 28 U.S.C. § 1915(a), this Court certifies that an appeal from this Order would not be taken in good faith for purposes of granting petitioner leave to appeal *in forma pauperis*. See Fed. R. App. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (1997).

A certificate of appealability should not issue with respect to the constitutional claim because "jurists of reason would not find it debatable whether this Court is correct in its procedural ruling" as required under the first prong of the two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), which is applicable to this case because petitioner's claims for relief have been found to be barred from review on procedural grounds. **See also** 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Accordingly, a certificate of appealability shall not issue.

This case is **DISMISSED AND TERMINATED** on the docket of this Court.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court